Supreme Court, U.S.
FILED
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No. 87-109

In The

Supreme Court of the United States

October Term, 1987

BILL ROSS CREAMER,

Petitioner,

v.

MICHAEL S. RAFFETY, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ARIZONA

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August 14, 1987

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PARTIES TO THE PROCEEDINGS

Petitioner, who was plaintiff below, is Bill Ross Creamer.

Respondents, who were defendants below, are Michael S. Raffety, Jean Raffety, Huey Lee Morris, Ruth Ann Morris, and City of Willcox.

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BILL ROSS CREAMER,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ARIZONA

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The respondent, City of Willcox, defendant-appellee in the court below, respectfully prays that the Petition for Writ of Certiorari to the Court of Appeals for the State of Arizona docketed on July 18, 1987 be denied.

OPINION BELOW

The opinion of the Court of Appeals of Arizona is reproduced at page 2a in the Appendix. The judgment of the Superior Court of Arizona is reproduced at page 7a of the Appendix. The denial of the Petition for Review of the Arizona Supreme Court on March 24, 1987 is reproduced at page 9a in the Appendix.

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JURISDICTION

The Supreme Court of Arizona denied review of this case on March 24, 1987. On June 2, 1987 Chief Justice William H. Rehnquist granted a Motion for Extension of Time for Petitioner to file his petition to July 22, 1987. The petition was docketed on July 18, 1987.

The jurisdiction of the Supreme Court was invoked by petitioner pursuant to 28 U.S.C. 1257.

———o———

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1988:

Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vin-

dication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

RESTATEMENT OF THE CASE

The petitioner brought this action in early 1980 against the City of Willcox and two of its police officers alleging false arrest, false imprisonment, malicious prosecution, and violation of his constitutional rights pursuant to 42 U.S.C. § 1983. The trial court granted summary judgment for defendants on the malicious prosecution claim based upon Arizona case law of long standing, *Wisninski v. Ong,* 94 Ariz. 123, 382 P.2d 233 (1963), and granted plaintiff leave to amend the Complaint.

The Amended Complaint asserted, in a total of eleven counts, claims for false imprisonment, failure to inform

plaintiff of bail conditions, delay in bringing plaintiff before a magistrate, intentional infliction of emotional distress, invasion of privacy, Section 1983 claims with respect to each of the foregoing, and a claim for injunctive relief against the City of Willcox regarding its strip search policies. The trial court directed verdicts for defendants on all claims in the Amended Complaint at the close of the plaintiff's case-in-chief after a five-day jury trial.

In *Creamer v. Rafferty,* 145 Ariz. 34, 699 P.2d 908 (App. 1984), the Court of Appeals of Arizona affirmed in part and reversed in part, remanding for trial the Section 1983 claims relating to conditions for bail, emotional distress (cruel and unusual punishment), privacy issues regarding the strip search policy of the City of Willcox, and injunctive relief regarding the issue of the strip search policy. After remand, the trial court granted plaintiff's request for injunctive relief, IR 26,[1] and denied his Motion for Partial Summary Judgment on the remaining claims. IR 28. The matter was then set for a second trial on September 24, 1985. *Id.*

On September 3, 1985, the plaintiff accepted an Offer of Judgment on the remaining claims in the sum of $5,250.00. IR 30. The plaintiff's claim for attorneys' fees and costs of approximately $80,000.00 under 42 U.S.C. § 1988 was reserved by stipulation and, after extensive discovery and two evidentiary hearings, IR 32-65, the trial court awarded costs and attorneys' fees in the sum of $15,000.00 on March 17, 1986. IR 65 A. 7a-8a.

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[1] IR = index of record, item number.

No request for findings of fact and conclusions of law was ever requested by the plaintiff or any other party. Pursuant to Rule 52(a) of the Arizona Rules of Civil Procedure such a request, to be properly and timely made, must be done prior to the evidentiary hearings involved. A review of the plaintiff's attorneys' fee application by the trial court, testimony at the evidentiary hearings and deposition testimony presented to the trial judge for his consideration reveal that excessive, unreasonable and unnecessary fees and costs were claimed. By way of examples, charges for two attorneys were claimed for the simple task of taking pictures of the jail facility at the City of Willcox, a charge directly to this case for the time spent and costs associated with attending an out-of-town seminar on civil rights law was attempted to be made, charges directly to this case for the costs associated with the purchase of library books was attempted, charges for legal research on issues not related to the case were attempted, and substantial charges for an inexperienced paralegal who merely sat in the courtroom during the trial were attempted to be claimed.

It was also claimed by the plaintiff's attorneys that they should be paid for fees and costs relative to the first appeal even though no proper and timely request for same was made pursuant to Rule 21(c) of the Rules of Civil Appellate Procedure.

The defendants presented the testimony of two expert witnesses regarding the unreasonableness of plaintiff's claim for fees. Robert E. Lundquist, an attorney who has practiced in Tucson for more than twelve years and handled Section 1983 cases for both plaintiffs and defendants

testified for defendant Raffety and Morris. TR I, pp. 5-7.[2] Mr. Lundquist gave the opinion that the plaintiff's fee application in this case was not reasonable in that one-half or more of the hours expended were unnecessary, and that the hourly rate was too high. TR I, pp. 10-11. Mr. Lundquist also testified that, based on his review of this case, a maximum reasonable fee for plaintiff's attorney would be $15,600.00. TR I, pp. 17-19.

John W. McDonald, an attorney who has also practiced for more than twelve years in Tucson, and tried more than sixty civil cases to conclusion, testified by deposition for the City of Willcox. (TR II, p. 87; deposition of John W. McDonald, pp. 9 and 10.) Mr. McDonald testified that a fee award to plaintiff's attorney in this case of between $7,500.00 and $10,000.00 would be just compensation. (Deposition at p. 21.) Mr. McDonald did not include in his fee calculation the value of any impact this case may have had on the strip search policies of the Willcox Police Department. (Deposition at p. 22.)

James E. Holland, Willcox city attorney, testified that the City Police Department implemented a new strip search policy six months prior to the injunction entered in this case, in December of 1984, and that the City did so in response to guidelines articulated in the case of *Giles v. Ackerman*, 746 F.2d 614 (9th Cir. 1984); TR II, pp. 18-20.

The plaintiff below then challenged the adequacy of the award of attorneys' fees in a second appeal. In this second

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[2] TR I refers to the transcript of the evidentiary hearing of December 9, 1985.

TR II refers to the transcript of the evidentiary hearing of December 24, 1985.

appeal, the Arizona Court of Appeals affirmed the award (as amended to include taxable costs and expenses). The Court of Appeals indicated that the trial court did, in fact, award some fees to the plaintiff as a prevailing party and that, in the judgment itself, the trial court recited the facts that it had presided over the initial trial, considered the Court of Appeals decision in *Creamer v. Rafferty*, 145 Ariz. 34, 699 P.2d 908 (App. 1984), reviewed the court file, its motions, memoranda and certain depositions taken regarding the fees issue and heard testimony in support of and against the motion for fees. A. 7a-8a. The Court of Appeals also noted that the Judgment itself recited that the trial court had considered the twelve factors regarding the determination of amounts of reasonable attorneys' fees as set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). A. 4a. The Court of Appeals then held that such a recitation was sufficient and that the trial court was not required to quantify each factor in order to show how it arrived at the amount of the award and that the record need only reflect that there was sufficient evidence under the applicable law to support the award, citing *City of Riverside v. Rivera*, — U.S. —, —, 106 S.Ct. 2686, 91 L.Ed.2d 466 (1986). A. 4a-5a.

The plaintiff-petitioner now challenges the Court of Appeals' decision on the basis that the trial court allegedly did not adequately state reasons for a reduction of the award.[3]

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[3] It should be noted that the plaintiff's proposed form of Judgment recited no basis for a fee award whatsoever. IR 66.

—o—

REASONS FOR DENYING THE PETITION

SUMMARY OF ARGUMENT

The decision of the Court of Appeals of Arizona is not in conflict with the decisions of this Court nor of the Federal Circuit Courts of Appeals with regard to the proper interpretation of 42 U.S.C. 1988 with respect to whether a trial court must state reasons in support of its fee award decision. In *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983), this Court reemphasized that trial courts have discretion in determining the amount of a fee award and that it remained important for trial courts to provide a concise but clear explanation of its reasons for the fee award. The rationale for such an explanation is to allow for an informed, appellate review, where necessary, of the trial court's use of its discretion. *Sargeant v. Sharp*, 579 F.2d 645, 647 (1st Cir. 1978); *Thorne v. City of El Segundo*, 802 F.2d 1131, 1141-42 (9th Cir. 1986).

In this case, the Arizona Court of Appeals correctly ruled that the factors considered by the trial judge as enumerated in the Judgment were proper matters of consideration, citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). A. 4a. The Court of Appeals also correctly pointed out that the trial court was not required to quantify each factor in order to show how it arrived at the amount of the award, citing *City of Riverside v. Rivera*, — U.S. —, 106 S.Ct. 2686 (1986). A. 4a. Finally, the Court of Appeals correctly realized (and so indicated) that substantial evidence existed to support the trial court's award and that the award was not clearly erroneous. The Court of Appeals specifically stated that the record need only reflect that there was sufficient evidence to support the trial

court's determination and that such a record existed in this case. A. 5a. Therefore, the award of the trial court was capable of being informatively and intelligently reviewed by the appellate court.

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ARGUMENT

I. THE TRIAL COURT DID PROVIDE A CONCISE AND CLEAR EXPLANATION OF ITS DECISION REGARDING THE FEE AWARD.

The trial court stated in its written Judgment that it had considered the twelve factors enumerated in *Johnson v. Georgia Highway Express, Inc., supra.* A. 7a-8a. The Judgment also generically enumerated the items of evidence and testimony considered. The Court of Appeals realized (and so stated) that the matters considered were ones that should have been considered in order to determine the amount of the fee award. A. 4a. The Court of Appeals then correctly held that the trial court's recitation was sufficient because it would be a waste of judicial time and, in some cases, impossible to quantify each factor in order to show how the amount of the award was determined. A. 5a.

The ruling of the Court of Appeals and its rationale is quite sensible and is also in conformance with the decisions of this Court and the Federal Circuit Courts of Appeals. The reason for any requirement at all that a trial court articulate reasons for its award or for providing an explanation for the award is to facilitate informed appellate review. *Ursic v. Bethlehem Mines,* 719 F.2d 670, 675 (3rd Cir. 1983); *Van Ooteghem v. Gray,* 628 F.2d 488, 497 (5th Cir. 1980).

In *Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983), this Court stated:

> We reemphasize that the district court has discretion in determining the amount of a fee award. This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters. It remains important, however, for the district court to provide a concise but clear explanation of its reasons for the fee award. When an adjustment is requested on the basis of either the exceptional or limited nature of the relief obtained by the plaintiff, the district court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained.

In this instant case, the trial court indicated in its Judgment that it considered all twelve of the *Johnson* factors including, of course, the amount involved and the results obtained. The reasons given by a trial court need not be so specific as to require individual justifications so long as the reasons given for the award as a whole are adequate to allow for meaningful review. *Lucero v. City of Trinidad,* 815 F.2d 1384, 1385 (10th Cir. 1987); see also, *Ramos v. Lamm,* 713 F.2d 546, 552 (10th Cir. 1983).

II. SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE TRIAL COURT'S AWARD.

Even if the trial court's Judgment regarding the fees awarded was not supported by an adequate recitation of reasons for the determination made, the record on appeal was sufficient to allow for informed appellate review.

In *Rutherford v. Pitchess,* 713 F.2d 416, 420 (9th Cir. 1983), it was stated that:

> "The district court . . . need not discuss specifically each of the twelve factors. *It is sufficient if the record shows that the court considered the factors* 'called into question by the case at hand and necessary to support reasonableness of the fee award.' " (Emphasis supplied.)

In *Davis v. City of Abbeville,* 633 F.2d 1161, 1163 (5th Cir. 1981), the Court found no necessity for remand of a fee award even where no articulation of the *Johnson* factors had occurred because the Court was unable to hold on the record before it that the trial court had failed or refused to consider the *Johnson* factors in making its award.

In *Murphy v. Kolovitz,* 635 F.2d 662, 664 (7th Cir. 1981), the Court, in determining the adequacy of a trial court's explanation when denying *in toto* an award of fees pursuant to 42 U.S.C. 1988, stated that although it agreed that a trial court must give reasons as to why it denies completely an award and must identify the "special circumstances" of the case leading to a denial of fees, the Court did not intend to say that the "special circumstances" must always be "neatly packaged and labeled on the record to avoid reversal if the 'special circumstances' are otherwise clearly and unarguably recognizable in the record as developed by the trial judge."

The Petitioner claims that the Arizona Court of Appeals has made a wholly arbitrary distinction when it requires trial courts to articulate reasons for denying a fee award altogether (as in *Moran v. Pima County,* 145 Ariz. 183, 700 P.2d 881 (App. 1985), *cert. den.,* 106 S.Ct. 397) and when, in this instant case, it does not require the trial court to articulate reasons for a substantial reduction in an award. However, the Petitioner fails to realize that ordi-

narily in Civil Rights Act cases the plaintiff, if he prevails, should be awarded reasonable fees "as a matter of course" absent special circumstances rendering them unjust. *Davis v. Murphy,* 587 F.2d 362, 364 (7th Cir. 1978); *Hensley v. Eckerhart,* 461 U.S. 424, 429 (1983); *Marek v. Chesney,* 473 U.S. 1, 105 S.Ct. 3012, 87 L.Ed.2d 1 (1985).

In instances where the prevailing plaintiff receives some award more than a nominal one but much less than requested then so long as the record reflects adequately the legitimate reasons why such a substantial reduction was made then no harm whatsoever has befallen such a plaintiff. This is because the amount awarded will have been determined by the trial court to have been the "reasonable" amount allowable and any subsequent appellate review will be informed and meaningful because of the existence of the adequate record made, regardless of the fact that the trial court did not articulate in great detail the reasons for the reduction. This is especially true in a case where the plaintiff did not request in a timely manner pursuant to Rule 52(a) of Arizona Rules of Civil Procedure that detailed findings of fact and conclusions of law be made relative to the attorneys' fees and costs issues.

Thus, it is clear that when a trial court has awarded fees, the award should not be set aside or remanded for further consideration or articulation of reasons where the record shows that the court did consider the *Johnson* factors called into question by the case at hand necessary to support the reasonableness of the award or where the record fails to reveal or disclose that the court did not consider the appropriate factors. In *Blum v. Stenson,* 465 U.S. 886, 897 (1984), this Court stated that when the fee applicant has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is

presumed to be the reasonable fee contemplated by 42 U.S.C. 1988. The petitioner simply failed in carrying that burden and the record is replete with support for the trial court's ruling on this fee application. Even if the trial court had not stated any reason at all there would not be any need to remand this case because of the obvious explanations on the record for the substantial reduction in the fee requested. In that respect, this case is similar to the situation in *Moran v. Pima County, supra,* at p. 185 where the appellate court held the articulation of no reasons for a complete denial of fees was error but no remand was necessary in view of the obvious explanation that only one of four plaintiffs prevailed and that award was *de minimus.*

Finally, petitioner states that a grant of certiorari and reversal is particularly warranted because the federal civil rights claims were litigated in state court and the decision of the Arizona Court of Appeals should be expressly repudiated. (Petition at pp. 13-14.) In addition to the facts that the decision of the Arizona Court of Appeals is correct and is in conformance with the decisions of this Court and Federal Circuit Courts of Appeal, the decision rendered was in the form of a Memorandum Decision not for publication pursuant to Rule 28(a)(2), Rules of Civil Appellate Procedure. Therefore, the disposition in this case cannot even serve as precedent in other cases where federal civil rights claims are determined in Arizona's state courts because memoranda decisions, pursuant to Rule 28(c), Rules of Civil Appellate Procedure, are not regarded as precedent nor cited in any court except for the purposes of establishing the defense of *res judicata,* collateral estoppel or the law of the case. The "doom" the petitioner claims will occur as a result of this decision by the Court of Appeals is, therefore, wholly illusory.

CONCLUSION

Because the Arizona Court of Appeals' decision in this case is not in conflict with existing Federal Law nor with the decisions of this Court or those of the Federal Circuit Courts and, further, because the trial court, when determining the fee award, stated an adequate recitation of its reasons and a sufficient record existed for informed appellate review, Bill Ross Creamer's Petition For A Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

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APPENDIX

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BILL ROSS CREAMER,	)	2 CA-CV 5761
	)	Department B
	)	
Plaintiff/Appellant,	)	*MEMORANDUM*
	)	*DECISION*
v.	)	Not for
	)	Publication
MICHAEL S. RAFFERTY, JEAN RAFFERTY, HUEY LEE MORRIS, RUTH ANN MORRIS, and CITY OF WILLCOX,	)	Rule 28(a)(2), Rules of Civil Appellate Procedure
	)	
Defendants/Appellees.	)	(Filed December 26, 1986)

APPEAL FROM THE SUPERIOR COURT
OF COCHISE COUNTY

Cause No. 39687

Honorable James L. Riley, Judge

AFFIRMED AS MODIFIED

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L A C A G N I N A, Judge.

Bill Ross Creamer filed a civil rights action for damages arising out of a strip search conducted in connection with his arrest in Willcox, Arizona. The complaint, filed pursuant to 42 U.S.C. § 1983, also sought to enjoin the City of Willcox from enforcing its strip search policy and asserted various other claims. After this court rendered its decision in *Creamer v. Rafferty*, 145 Ariz. 34, 699 P.2d 908 (App. 1984), the parties settled the case except for Creamer's claim of $64,000 for attorneys' fees. Trial of that claim to the court resulted in an award of $15,000 for fees, expenses and costs.

Creamer asks in this appeal that we remand the case to the trial court for a statement of the reasons for the amount of the award. In the alternative he asks that we increase the trial court judgment by approximately $64,000, the amount requested in the trial court. Prior to our consideration of this appeal, we ordered the trial court to enter findings showing the specific amounts of costs and fees included in its $15,000 award. In its Minute Entry response, the trial court stated that the $15,000 was an award of attorneys' fees only and that although it had intended to award reasonable costs and expenses in addition to those attorneys' fees, it inadvertently failed to do so in the March 17, 1986 judgment. We affirm the findings of the trial court as amended to include taxable costs and expenses.

Creamer first argues that the trial court failed to state its reasons for the amount of attorneys' fees awarded as required by 42 U.S.C. § 1988. He relies on *Moran v. Pima County*, 145 Ariz. 183, 700 P.2d 881 (App. 1985), *cert. denied*, 106 S.Ct. 397; however, *Moran* is distinguishable

from the instant case. In *Moran* the trial court denied fees altogether, and this court held that the judge should have given the reasons for such denial. We reaffirm that ruling. However, where more than nominal fees are awarded, we hold that the trial court is not required to state reasons in support of the award.

In the case at issue, the trial court did award attorneys' fees to Creamer, the prevailing party. In its judgment, the trial court stated that it had considered:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

The judgment also stated that the court had presided over the initial trial of the matter; considered this court's decision on appeal; reviewed the file, motions, memoranda and certain depositions, and heard testimony in support of and in opposition to the motion for attorneys' fees. Although these statements do not constitute reasons for the amount of the award, they are matters the trial court should have considered in determining that amount. *See City of Riverside v. Rivera*, — U.S. —, n.3, 106 S.Ct. 2686, 2691 n.3, 91 L.Ed.2d 466, 475 n.3 (1986), *citing Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th

Cir. 1974). This recitation is sufficient. The trial court is not required to quantify each factor in order to show how it arrived at the amount of the award. *See City of Riverside v. Rivera, id.* This would be a waste of judicial time and, in some cases, nearly impossible. The record need only reflect that there was sufficient evidence under the applicable law to support the court's determination.

We find that there was substantial evidence to support the trial court's award. There is contrary evidence, but the trial court's findings are binding unless clearly erroneous, and we will not substitute our opinion for that of the trial court. *Higdon v. Evergreen International Airlines, Inc.*, 149 Ariz. 452, 453, 719 P.2d 1068, 1069 (1986); *Fleming v. Pima County*, 141 Ariz. 167, 168, 685 P.2d 1319, 1320 (App. 1984), vacated in part, 141 Ariz. 149, 685 P.2d 1301 (1984). Two experienced attorneys testified that they had reviewed the file and familiarized themselves with the legal work required. One testified that a maximum reasonable fee for Creamer's counsel would be $15,00, including work on appeal, and the second that $7,500 to $10,000 would be full, complete, adequate, and just compensation for Creamer's counsel.

The evidence offered by Creamer showed that his counsel had the case from 1980 through 1985; worked 478.6 hours on it; had billable time of 89.5 hours for a paralegal; and had a total of $6,172.72 in costs and expenses. The necessity of the hours claimed by the attorneys and paralegals was hotly contested. Both attorney witnesses testified that the amount of time claimed by Creamer's attorneys was unnecessary and unreasonable.

The amount of attorneys' fees to be awarded in civil rights litigation is within the sound discretion of the trial

court, *Hensley v. Eckerhart,* 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), and will not be disturbed absent an abuse of that discretion. *Rutherford v. Pitchess,* 713 F.2d 1416 (9th Cir. 1983). We find no abuse of that discretion in this case.

Since the trial court intended to award costs in addition to the $15,000 attorneys' fees, but the judgment failed to include costs, we amend the judgment of the trial court to include $4,007.26 for the costs and expenses which we have determined are properly taxable.

/s/ Michael A. Lacagnina
MICHAEL A. LACAGNINA, Judge

CONCURRING:

/s/ Lloyd Fernandez
LLOYD FERNANDEZ, Judge

/s/ Joseph M. Livermore
JOSEPH M. LIVERMORE, Presiding Judge

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF COCHISE

BILL ROSS CREAMER, Plaintiff,	NO. 39687
vs.	PROPOSED FORM OF JUDGMENT
MICHAEL S. RAFFERTY, et al., Defendants.	

The court having considered the Plaintiff's Motion For Award Of Attorneys' Fees and Costs in the above-entitled matter and this court having presided over the initial trial of the matter; having considered the decision of the Court of Appeals; having reviewed the file, motions and memorandums in support of and in opposition to the motion for attorneys' fees; having reviewed the depositions of Mr. Behrens and Mr. McDonald and heard testimony before the court in support of and in opposition of the motion for fees; having considered (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;

(7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. IT IS THEREFORE

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendants and the court assess reasonable costs and attorneys' fees in the amount of $15,000.00.

DONE IN OPEN COURT THIS 17th day of March, 1986.

/s/ .....
Honorable James L. Riley
Superior Court Judge
Cochise County-Division 3

(SEAL)

SUPREME COURT

STATE OF ARIZONA

201 West Wing State Capitol
1700 West Washington
Phoenix, Arizona 85007 2866
Telephone (602) 255-4536

DAVID R. COLE
Clerk

DIANA K. BENTLEY
Chief Deputy Clerk

March 25, 1987

RE: BILL ROSS CREAMER vs. MICHAEL S. RAFFETY/JEAN RAFFETY/HUEY LEE MORRIS, et al.
Supreme Court No. CV-87-0084-PR
Court of Appeals No. 2 CA-CV-5761
Cochise County No. 39687

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 24, 1987, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Record returned to the Court of Apeals, Division Two, Tucson, this 25th day of March, 1987.

DAVID R. COLE, Clerk

TO: Tony K. Behrens, Esq., Desens & Behrens, P. O. Box 87, Bisbee, AZ 85603

Tom R. Clark, Esq., Mesch, Clark & Rothschild, P.C., 259 North Meyer Avenue, Tucson, AZ 85701

Michael J. Frazelle, Esq., and Thomas E. Weland, Esq., Ridenour, Swenson, Cleere & Evans, 2350 Valley Bank Center, 201 North Central Avenue, Phoenix, AZ 85073

Joyce Goldsmith, Clerk, Court of Appeals, Division Two, 416 W. Congress, Tucson, AZ 85701

daw